

MINUTES

MONTANA SENATE 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By **CHAIRMAN JOHN C. BOHLINGER**, on February 25, 2003 at 3:45 P.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. John C. Bohlinger, Chairman (R)
Sen. John Esp, Vice Chairman (R)
Sen. Jerry W. Black (R)
Sen. Brent R. Cromley (D)
Sen. Jim ELLIOTTt (D)
Sen. Kelly Gebhardt (R)
Sen. Bill Glaser (R)
Sen. Rick Laible (R)
Sen. Jeff Mangan (D)
Sen. Carolyn Squires (D)
Sen. Mike Wheat (D)

Members Excused: None.

Members Absent: None.

Staff Present: Leanne Kurtz, Legislative Branch
Phoebe Olson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SJR 25, 4/17/2003; SJR 26,
4/17/2003; SB 425, 4/17/2003; SB
368, 4/17/2003
Executive Action: SJR 25; SJR 26; SB 425; SB 370; SB
372; SB 46; SB 396

HEARING ON SJR 25

Sponsor: SENATOR JOHN BOHLINGER, SD 7 Billings

Proponents:

None

Opponents:

None

Opening Statement by Sponsor:

SENATOR JOHN BOHLINGER, SD 7 Billings said SJR 25 was joint resolution of the Senate and House of Representatives strongly urging that Taiwan be permitted to participate in the activities of the World Health Organization. The World Health Organization is the United Nations Specialized Agency for health and was established in 1948. It's objectives as stated in it's constitution is the attainment by all peoples the highest possible level of health. Health is defined by the World Health Organization constitution as a state of complete physical, mental, and social well being, not just the absence of disease or infirmity. All countries who are members of the United Nations may become members of the World Health Organization by accepting it's constitution. Other countries may be admitted as members when their application has been approved by a simple majority vote of the World Health Authority. There are presently 192 member states. He mentioned all the member states that began with the letter T because he thought it was ironic that Taiwan, a country with some 23 million inhabitants and larger than 75% of the World Health Organizations member states, it's a country whose achievements in the field of health are substantial is not a member. Taiwan has one of the highest life expectancy levels in all of Asia, and has a maternal and infant mortality rate that is comparable to those of our western countries. Taiwan is the first Asian nation to eradicate polio and was the first country in the world to provide children with free Hepatitis B vaccination. Taiwan has expressed its willingness to financially and technically assist the international aid and health activities supported by the World Health Organization. Taiwan participation in the activities of the World Health Organization could bring many benefits to the state of health not only in Taiwan but to the region and our World. He said it was with these thoughts I bring forward SJR 25 for your consideration.

Closing by Sponsor:

SENATOR BOHLINGER said he submitted this to the committee for their thoughtful consideration.

HEARING ON SJR 26

Sponsor: **SENATOR JOHN BOHLINGER SD 7, Billings**

Proponents:

None

Opponents:

None

Opening Statement by Sponsor:

SENATOR JOHN BOHLINGER, SD 7, Billings said SJR 26 was a resolutions of the Senate and House of Representatives of the State of Montana urging the United States Congress to appropriate just compensation to the state of Montana for the impact of federal land ownership on the states ability to fund public education. He said Montanans pride themselves on their commitment to education. He said it was the hope of each generation that our children and their children will accomplish more in life than we. It is generally understood that the key to accomplishment or success is dependent upon a good education, hard work, and a little luck. SJR 26 brings forth recognition that 28.9 percent of Montana's land mass is federally owned. So one might ask how does this affect education. In Montana education is principally funded with real estate taxes. With such a high percentage of federal ownership, our ability to provide an expandable tax base for education is limited. We have reached that limit. Homeowners have no more elasticity in their budget to provide for increased funding for education. He said it was interesting to note that from 1979 to 1998 the percentage change in expenditures per pupil funding in the thirteen western states averaged an increase of 28% as compared to an increase in funding for the rest of the country at 57%. The ability of the western states to fund education is directly related to federal land ownership. SJR 26 will urge Congress to address this disparity in funding for education and he hoped they could support this measure.

Questions from Committee Members and Responses:

SENATOR KELLY GEBHARDT asked if this money would come from any particular places.

SENATOR BOHLINGER said the resolution was just a simple statement of the inequity with which education is funded, and the way our state received funding. He said it was not making a request that funding come from one particular federal source, it's just pointing out the inequity and hopefully we will find a thoughtful ear amongst our Congressional Delegation who could then make request to our Federal Congress.

SENATOR GEBHARDT said he would suggest you identify about three sources of federal funding and include them in your request. You might get further in the process.

Closing by Sponsor:

SENATOR BOHLINGER said he was disappointed that Mr. Feaver was not there to support the measure. He submitted the proposal to the committee for their consideration.

HEARING ON SB 425

Sponsor: **SENATOR RICK LAIBLE SD 30, Victor**

Proponents:

Mike Kakuk

Diane Beck, MAR, Missoula

Opponents:

Opening Statement by Sponsor:

SENATOR RICK LAIBLE, SD 30, Victor said you have before you SB 425 and there is an amendment that has been prepared and he handed out copies. **EXHIBIT(los42a01)** He said one of the major concerns he had from local governments concerning this bill was the fact that the five day limit for deciding whether or not an application was complete, was a little more restrictive than what they felt they could concur in. He thought one of the reasons was that many of our local governments are short staffed and if someone happened to be on vacation this might be a problem, so the amendment loosened up the bill and provided a little more flexibility to local governments. He said the crux of the bill was the fact that we need some side boards on the process that deals with subdivision and development submittals. He said currently in some local governments is the fact that a submittal is made and the presenter thinks all is well and the local government had 60 days to make a decision based on current statutes. He said somewhere in the 60 days the presenter could

get a call from the planning department that said they were short a piece of paper, then the 60 days starts all over. He maintained that was unfair to those who were presenting the submittals. So SB 425 says within 10 days after the submittal has been presented the reviewing agency must come back to the submitter and say this is what you're short. He said the reviewing agencies have 60 days from the time a submittal is done to make a decision. This bill would put the guidelines on there for what the time frame is and at the same time if a presentation is rejected by the agency they would be required to inform the developer as to why it was rejected and under which statute it was rejected. So this bill does two things. One, it sets the time frames, and two, if a project is rejected that we allow the submitter of that project to know why it was rejected. He said that was the basis of the bill, and he would be happy to answer questions.

Proponents' Testimony:

Michael Kakuk, MT Association of Realtors said the bill as amended is reasonable and workable. He read the new language of subsection 2a. He said the goal here was to say "ok local governments, get your check lists out, check this, is everything in here that should be in here." For example, does it talk about traffic impacts, if traffic impacts are required by the local governments subdivision regulations, then it must have traffic impacts in there or it is not complete. He said this is not a review of the sufficiency of the information, it is just saying all the information that is required is there and the sixty day clock starts. The developer and the local government know that and things are moving. He said should the local government determine on day 59 that there is not enough information to approve the subdivision they of course have the statutory responsibility to go back to the developer and say their wasn't enough information and they need an extension of time, or the developer would have to resubmit. He claimed they were also asking for specific information on why the subdivision has been either conditioned or denied. He gave an example. He said the second part of the bill applies what he had just explained to the sanitation and subdivision act as well as the platting act. He said the amendments tighten it up and make sure that it is clear that the ten day completeness review applies to minor subdivisions as well. He said he would be available to answer questions.

Diane Beck, MT Association of Realtors - Missoula said they were in support of SB 425. For various reasons the time line of sixty days had been broken down. Some may suggest that we are trying to legislate better communication between government and public, in a sense that is the outcome we are seeking, but it is more than simply exchanging information. She said that they were trying to

restore some of the predictability to the process for those in the development community. She said they rely on predictability and they want to provide housing for those people of Montana who are in need in a timely and cost effective manner. Project delays cost money. She said all they were asking is that the reviewing authority take the time up front to run through the check list of the documents to make sure they have everything they need to conduct a proper review. If something is missing then the applicant can provide it as soon as possible, so the review is not unnecessarily delayed by a paperwork problem later on. She said they were not asking for a determination that the information is sufficient in scope and detail, only that all the pieces of the puzzle have been provided. This bill is not intended nor should it infringe on other localized process that help further communication between the project applicant and their reviewing authority. She wanted to ensure those other process don't become an impediment to a timely review of the application. Subdivision review can be a partnership effort if all parties are responsive to the other needs. SB 425 will enhance that partnership by putting a finer edge on the expectations of the review process. She thanked them for their consideration and their time.

Collin Bangs, Missoula said he as a realtor in Missoula. He expressed the intent of the law that it takes 60 days from the time you have a subdivision you would like to submit until final approval. He said the last subdivision he did took from June 29, 2001 to August 28, 2002. He said this bill would not solve all the problems, but anything that would help was a good start.

Peggy Trenk, MT Association of Realtors handed in written testimony from Billings that documents a time line for a project. **EXHIBIT (los42a02)**

Byron Roberts, MT Building Association said they thought this bill pushes the reviewing authority into looking at applications up front instead of on the 45th or 60th day. It adds predictability to the process and they were in support of it.

Opponents' Testimony:

Leo Gallagher, Lewis and Clark County said he opposed the bill as written but had not seen the amendments. He said SB 425 had been reviewed by the planning department of Lewis and Clark, Missoula, and Ravalli county and these three planning departments all criticized the bill as written because it shortened up the process to a degree that they felt they could not comply with the requirements of the bill. He said maybe some of those problems

had been remedied with the proposed amendments, but it was hard to talk about that without further analysis.

{Tape: 1; Side: B}

Travis West, Stillwater County said they opposed the bill and he submitted a testimony from **Tammy McGill**. **EXHIBIT(1os42a03)**

Linda Stoll, MT Association of Planners said the rapid growth counties would have a difficult if not impossible time trying to comply with this law. She said the other problem they saw with the bill was it ignored the importance of the public participation process in the subdivision review process. Public hearings occur well after the five day time frame prescribed in this legislation. She said if the public raises issues that were not addressed by the reviewing agency, this law appears to render those issues mute. She commented that it was important for the committee to understand that pre-application conferences do not start the sixty day clock. It does not start until the application is actually submitted. She said this bill rushes the process, and rushing the process is not in the public's best interest. Please vote no.

Susan Brueggeman, Lake County Environmental Health submitted written testimony. **EXHIBIT(1os42a04)**

Jennifer Magic, Gallatin County said she had been a Montana planner for seven years and had been reviewing subdivisions for that same amount of time. She asked that they oppose the bill. She did not think it was necessary. She said Gallatin County tries to determine deficiencies in three days.

David Nielsen, City of Helena limited his comment to page 2, the proposed provision that would require the governing body to give the specific statutory authority if there was a disapproval. He said public attorneys would have to come up with that, and in the big picture he was not sure what they would do with that statutory authority. He asked them to take a real hard look at that.

Tim Roark, Gallatin County Health Department, opposed the bill and submitted a letter from Missoula County. **EXHIBIT(1os42a05)**

Don Hargrove, Gallatin County said they amendment had made the bill considerably more palatable. He had been asked to oppose the bill. He did not think the time frames were needed. He did think the portion of the bill that required an explanation if a application was refused was a good idea.

Gordon Morris, MT Association of Counties said he thought they had heard everything they needed to hear about the bill. He wanted the committee to know they opposed the bill.

Tim Davis, MT Smart Growth Coalition said he hadn't seen the amendments, but the biggest issue they had with the bill was the fact that it would say if you don't have all the information up front you can't ask for new information after the application is going to be submitted. He said you never know what will come up in the process.

Mike Kadas, City of Missoula said he was not opposed to the notion of a time frame, as long as it is pre-application and does not flow into the application period. He said the biggest problem is a bill that is introduced in the eleventh hours that have massive amendments that change it. He said it makes for a ragged process. He said the information should be available for all to see, or the committee should tell the proponents they have to wait, they did not do it fast enough.

Harold Stepper, Jefferson County showed the committee the stack of work he does everyday. He maintained he was a one man band in Jefferson County. He said he could not comply with the law if the time period was shortened.

Questions from Committee Members and Responses:

SENATOR CAROLYN SQUIRES asked **SENATOR LAIBLE** why the bill was introduced at such a late date.

SENATOR RICK LAIBLE said there had been problems with drafting the bill and the fiscal note. He reminded the good Senator that the legislative process by its nature is last minute. He said it might not be the best process, but it was all they had to work with.

SENATOR MIKE WHEAT asked how the sponsor would respond to the last opponent who was one man show. He says he can't comply, why should we pass a bill that would put such a burden on this man.

SENATOR LAIBLE responded that the existing statutes call for sixty days. His questioned whether Jefferson County might need to add some staff. He said they could go through the box after the hearing and confirm what time period those applications were submitted and that might clear up the issue. The time frames are already in statutes.

SENATOR WHEAT said he took it that the sponsor wanted the bill to pass because cities and counties were not complying with the time frames already in statute.

SENATOR LAIBLE said some of the cities and counties were complying, but they thought what happened was they were extending beyond the time frame, and they were trying to put some guidelines on what is allowed.

SENATOR WHEAT asked Harold Stepper to respond to the question.

Harold Stepper replied that they had three applications submitted in a two day time frame last week. He said it was a tremendous amount to review in a short period of time. He said it was even questionable on a ten day limitation.

SENATOR WHEAT asked if he was able under the existing statutes to get all of the subdivision applications completed within the time requirements.

Harold Stepper replied he was.

SENATOR WHEAT asked what it was with the bill that he thought would make his job more difficult if not impossible.

Harold Stepper replied he felt that when you experience high growth, and no budget to hire more staff, it is hard to get done.

SENATOR WHEAT asked **Jennifer Magic** to explain her concerns are with the proposed legislation.

Jennifer Magic replied she did not think it was necessary. She thought current statute was working fine. She said in Gallatin County they review an application for completeness within three working days. In Gallatin county it is a struggle to meet a preliminary plat approval for a major subdivision within that sixty day working period. There is a lot of stuff that needs to be covered. Getting notices out and the planning board only meeting twice a month makes it difficult to get these things done in the allowed time period. She maintained there were a lot of hoops to jump through.

SENATOR WHEAT asked when they found a deficiency in an application if they notified the developer in any detail of what the deficiency is and how they can cure that deficiency.

Jennifer Magic said they did, and they tried to get to that immediately.

Closing by Sponsor:

SENATOR LAIBLE thanked the committee for an excellent hearing. He appreciated the opponents that made comments and thought once they had a chance to truly review the amendments they would find that in most instances working within the bounds of the bill. He said the ten day time period is not for the sufficiency, only for the completeness. It is to make sure all of the things that need to be there are there. He thought if a planning department had a check list these are the things we need, they can go down the checklist and decide whether or not those things are there, so that the applicant has an opportunity to present those things, and make sure all the information is there and complete. **{Tape: 2; Side: A}** He said if Gallatin County does a completeness check within three days, they would already be in compliance with the proposed statutes in this bill. He said it was fair that if a project was denied, the applicant ought to know under what conditions it was denied and why. He said there was nothing in the bill that said you couldn't ask for additional information, anywhere along the time line. He said the reason for this bill was that some local governments keep moving the sixty day target when they ask for additional information. He wanted the process to be fair to the applicants. He thought this was a good bill, he thought it conformed to the guidelines presently in place and allowed flexibility for additional time for the county government if they deem it necessary, and if you turn a project down, you need to tell the applicant why. He thanked them for a good hearing. He said he would be happy to answer more questions in executive action.

HEARING ON SB 368

Sponsor: **SENATOR JOHN BOHLINGER, SD 7, Billings**

Proponents:

Opponents:

Opening Statement by Sponsor:

SENATOR JOHN BOHLINGER, SD 7, Billings submitted his opening statement. **EXHIBIT(10s42a06)**

Proponents' Testimony:

Curt Chisholm, MT Building Industry Association said last week you heard SB 396 by Senator Perry. That bill was intended to prohibit the imposition of monetary or land exactions as a

condition of permit approval from a city with self governing powers for a specific land use plan. The intent of the bill was to eliminate local government authority, explicitly or implied currently relative their ability to impose fees to pay for new development impacts in the community, because that is what an impact fee is. A fee charged to cover the effect of new development impacts to a city or a county as a condition of that local governments approval. This bill is quite different, and not totally incompatible with that bill. SB 396 would have prohibited such authority unless specifically authorized by law. This bill, which had the support of the entire association grants that specific authority to local government but reasonably limits the authority of local government to assess an impact fee to three specific areas of impact; public water, public sewer and roads. It also requires the city or county to meet the NEXUS and proportionality requirements of the constitution in assessing those fees. He went over what he thought the opponents would say, and explained the tax cap, and local governments ability to assess mills and so on. He maintained that revenue to cover the general costs of government should not come from impact fees. He said local governments have the ability to generate sufficient revenues to cover the cost of their governments. He said they agreed that governments should stay ahead of development impacts by aggressive, insightful and definitive planning so that as areas are developed they have anticipated the infrastructure requirements of that growth and can charge the appropriate impact fee to cover water, streets and sewers that are impacted by development. He said they were sensitive to the fact that people who have lived in neighborhoods for many years should not have their property taxes go up because a new subdivision goes into effect and creates impacts. He said they completely agreed that the developer should pay a proportionate share of those three fundamental infrastructure requirements or at times maybe pay for the whole thing. If the community in general is experiencing growth and overall city or county costs are rising, then everyone should pay a proportionate share through their property taxes, or be allowed to vote on special bond or mill levies for such improvements, they should not be borne exclusively by the new resident in a community. He said if the assessment of local impact fees is the local governments way of implicitly suggesting they do not want growth without actually saying it, then someone needs to be more up front with that political policy and stop inhibiting property development by either making such development outrageously expensive or leveraging the ability of those permits so these kinds of exactions in order to fund general government under the guise of impacts. He said they had been told they need to trust the elected officials of our local governments and allow them to determine what is best at the local level and not bring this issue to the state legislature. He said unfortunately this is not a matter of trust. An 180% difference of philosophy exists

relative to what local governments should be allowed to charge in impact fees as opposed to funding through general tax revenues. Local governments feel that it is appropriate to include in an impact fee such things as park acquisitions, bike and walking trails, fire department expansion, police department expansion, sheriff departments expansions and so on and so on. He said they believed it was appropriate to charge an impact fee on impacts to public water, public sewer and roads, but all other needs are appropriately funded through property tax revenue. He said lastly there was not a general understanding of what is meant by impact fees. He said the would agree to pay reasonable impact fees. Since there was no middle ground he hoped the legislature would provide statutory guidance through the provisions of this bill to local governments defining when and how they can charge impact fees.

Byron Roberts, MT Building Industry Association said they had worked on this for a long time and this bill was about fairness. He said this would ensure families buying new homes would pay no more than their fair share of the costs of public facilities and public services. He said this bill also provides for citizen involvement and due process protections for community development. He discussed the situation in Bozeman in great detail, and about the study by MSU.(see exhibit 7) He maintained impact fees were easy for local governments to sell and institute, as they are shifting the tax burden from people currently living in the community to people who are not even their yet. He said it was time to put everything on the table and look at the real costs of local government facilities and services and compare those costs to the taxes and fees paid by new home owners. In the interest of equity and affordable housing he urged the committees support of SB 368.

Michael Kakuk, MT Building Industry Association explained the impact fee calculation schematic that was in the packet he handed out to the committee. **EXHIBIT(10s42a07) {Tape: 2; Side: B}** He explained if that formula was followed you would be constitutionally ok. He made himself available for questions.

Gene Graff, MT Children said this was not about denial it was about participation. He said they were really talking about the tyranny of the majority. You would be hard pressed to convince me that the convenience store has to have the highest impact fee for roads in Bozeman. He said they had paid \$91,000 in city fees for a family Italian restaurant and in the county the fees would have been less than 10% of that. He said under the current fee system in Bozeman a 100,000 square foot retail store would be required to pay \$966,000 in impact fees for sewer, water, and roads. He said they were currently in the midst of providing an upgrade on

19th and Valley Center through an SID process, at an estimated cost of \$3 million for over a mile of road. So one business that would take up a fraction of the useable space would supply 20 to 25 percent of that.

Collin Bangs, Missoula submitted written testimony.

EXHIBIT(los42a08)

Anita Varone, self said this bill established a frame work for impact fees. She offered one consideration for their review. On page three, the definition of the impact fee, she asked that they include the cost of administering the impact fee process. She said she strongly supported the bill.

Dab Dabney, Farmhouse Partners said he had built approximately 280 affordable apartments in the last 8 years at a cost of about 20 million dollars. He said impact fees in Bozeman had made it much harder to do his job and serve the low income families of Bozeman. He said they were currently building a 44 unit project called the Bridger Apartments that will cost approximately 5.3 million dollars. He said he paid \$160,000 dollars in impact fees for the project. He said the last project he completed he paid \$90,000 dollars in impact fees or 8% of his construction costs. He maintained he also extended the water manes and put in road. He said his point today was when developers are required to pay for substantial public improvements like streets and water manes, in addition to impact fees, the relationship between impact fees and the true cost of development becomes fuzzy. He said it was crystal clear that impact fees mean higher rents and higher homes costs.

Don Garramone, Missoula believed this bill was a good bill. He was concerned about how impact fees effect affordable housing and new businesses. He asked the committee to consider this bill.

Dianne Beck, MT Association of Realtors submitted written testimony for herself **EXHIBIT(los42a09)** and **Thomas Llewellyn EXHIBIT(los42a10)**.

John Harding, Great Falls Home Builders Association said they were in favor of this legislation.

Richard Smith, RJ Associates, said he supported the bill and handed out a letter from the **Southwest Building Association. EXHIBIT(los42a11)**

Sally Hickey, Self said she had seen the cost of housing go higher partially due to impact fees. She asked they consider

putting fairness into the fees, and helping them to right the rules so people did not pay more than their fair share.

Michael Jarrett, Bozeman urged the committee to pass the legislation.

Carl Schweitzer, Subcontractors Association of Montana said they fully supported the bill.

Dennis Iverson, MT Contractors Association said they felt that impact fees should be in direct proportion to the impact itself, and they supported the bill.

Opponents' Testimony:

Clark Johnson, City of Bozeman handed out a packet containing testimony and the City of Bozeman Impact Fee Information Sheet. He discussed these with the committee. **EXHIBIT(los42a12)**

Don Hargrove, Gallatin County said he chose to come early in the line, he expressed their opposition but in the context of their appreciation for the sponsor for his principals and involvement in local government. He noted that the fiscal statement said there would be significant local impacts and that there are technical concerns.

Mike Kadas, City of Missoula handed out two documents and explained them to the committee. **EXHIBIT(los42a13)** He pointed out there were a number of problems with the bill. One, it only applies to water, sewer and roads. He said they could not assess on roads because they don't have enough proportionality to do that and roads are not even included in their study. He said they don't own the water system in Missoula so that wouldn't count. He said what about storm drains, infrastructure for police and fire, should the general taxpayers pay for those. What about parks, he said his people tell them that parks are critical. He said if they are unable to continue to develop those amenities and critical facilities, they will lose ground, become an ugly community where no one wants to come. He said the three year limit was a problem because most major subdivisions take at least three years to develop. He said some projects take along time to build. He said the bill dictates how they need to do their sewer billing. He wondered what business the legislature had in that. He said the bill appears to prohibit the use of special improvement districts. He said they often use those at the request of developers because it offers long term and low interest ways of financing. He said it was confusing they would want to eliminate that as an option to reduce costs in subdivisions. He said this bill would make them go back and redo

their wastewater facilities plan that took them three years to do and cost a half million dollars. He said that as ridiculous.

Steve Kirchoff, City of Bozeman said he was opposed to the bill. He said the city of Bozeman followed a public process and put impact fees into effect in 1996. He said the essential features of Bozeman's unique impact fee program would be invalidated by this bill's passage. He submitted that they were in the room today because of the outcome of the latest chapter in the local implementation of impact fees. Bozeman voters supported in an initiative increases to the rates at which impact fees are collected locally. He said this initiative sparked a debate. The opponents then filed a lawsuit against the city and encouraged the drafting of bills like this one. This committee is being asked to reverse the will of the people in Bozeman. Local citizens have told us that they favor the impact fee program as it currently exists. He asked the committee to please resist the temptation to tempter with the electors will. He asked them to kill the bill.

Linda Stoll, MT Association of Planners left the committee with some information. **EXHIBIT(los42a14)** She said it would give the committee excellent information as a follow up to a lot of people's testimony. She said she had met with the sponsor last week and went over some amendments that the sponsor did have. She explained some language they were uncomfortable with.

Alec Hansen, League of Cities and Towns said this affected every city and town in Montana. He wanted the committee to know that the league opposed the bill.

Jani McCall, City of Billings submitted written testimony. **EXHIBIT(los42a15)**

Chuck Frupp, Human Resource Development Council, Bozeman, asked the committee not to take away the tools and make it more difficult to provide affordable housing.

Tim Davis, MT Smart Growth Coalition, thanked the sponsor for meeting with him before the hearing. He said this bill would create two classes of cities and counties in Montana, those that can afford to create this incredibly complex and difficult to implement legislation and those who can not. He handed in testimony from Teton and Madison county. **EXHIBIT(los42a16)** and **EXHIBIT(los42a17)**

Brian Close, City of Bozeman said this bill was fatally flawed and was a Trojan horse. He maintained it was not needed. He said Bozeman was building five times the residential and office space

than in lower impact fee areas. He said the idea that impact fees cause sprawl is simply not true. He also maintained the bill destroyed impact fees. He encouraged them to vote no.

Jon Gerster, Bozeman Neighborhood Council said they were very much against the bill. He made the point that the current Bozeman voters had already stepped up to the plate and passed various bonds needed in Bozeman. He said the voters in Bozeman were subsidizing the growth needs. He asked the committee to oppose the bill.

Christopher Greko showed a copy of the petition that was circulated in Bozeman to get Initiative 19 up for a public vote. He said democracy was alive and well in Bozeman. He believed the issues and questions involved in this bill are best decided on the local level. He asked they oppose the bill.

Gene Quenemoen, self said he was on a fixed income and strongly favored the concept of impact fees. He said in his community the local government had proved to be capable of determining and administering impact fees in a manner fair to all. He said he was concerned that SB 368 was too restrictive.

Chris Nixon, self said he opposed the bill and asked them to respect the will of the voters of Bozeman and leave the control over impact fees locally.

JD Lynch, Butte SilverBow said local governments should have flexibility.

Joe Mazurek, City of Great Falls said there should be a compromise found in the interim.

Joe Frost, Bozeman said they had impact fees for nine years and they were blooming. He asked them not to screw it up.

Mary Vant Hull, Bozeman said the unintended consequences could harm Bozeman. She said the road to hell was paved with good intentions. This bill was good intentions and that was all.

Jennifer Magic, City of Bozeman said SB 368 established a daunting process. She said the current system was simple, reasonable and flexible, and understandable.

Gordon Morris, MT Association of Counties said he was conflicted on the bill. He said he had to rise in opposition to the bill. He called their attention to the whereas provisions and stated the could be problematic.

Questions from Committee Members and Responses:

SENATOR JIM ELLIOTT said that **Mike Kadas** pointed out quite accurately that this is the last bill that we will hear before transmittal. He said it was now six at night. He said there was not time to read the evidence or consider this carefully. Why is this bill here so late.

SENATOR BOHLINGER said he did not manage the scheduling of bills. He said he brought the bill forward as soon as it was available. He said Mike Kadas was a part of the legislative process for quite some time, he agreed that not enough time was allowed for a sufficient study of any question they deal with. He said they will be asked to consider 1,000 pieces of legislation during a session. He believed few would read all those bills and few would understand all the bills proposed. He said it was as straightforward a proposition as any. He wished they had more time to deliberate and consider this, but time was not available. He said it was not an attempt to do an end run.

SENATOR ELLIOTT said the bill draft on this bill was received on September 24, 2002. He thought that seemed to be plenty of time.

SENATOR BOHLINGER said he saw LC 277 about three weeks ago. He said he was carrying this bill on behalf of an important industry in the state.

SENATOR ELLIOTT asked if the chairman did not in fact schedule the committee bills.

SENATOR BOHLINGER said he had seen an LC number that had to work its way through the process. The bill number came ten days ago and it took its place in line.

SENATOR JEFF MANGAN said he asked Leanne if they could do this with just section 4. He thought they could do it conceptually. Why not allow local governments with some general structure the ability to develop and have their own plan for impact fee.

SENATOR BOHLINGER said once the bill was presented to the committee they can do whatever it wants with the bill. He said that would defy the intent of what is trying to be partnered here.

SENATOR WHEAT said there was testimony that the building industry and the counties were not able to find middle ground, others testified they were in negotiations now. He said he heard other testimony that they are negotiating with developers to try and develop sensible impact fees. Given all that, he wondered why

they couldn't put this bill on hold and let it get worked out during the interim. This is very complicated and they issues are very important to cities, counties and contractors.

SENATOR BOHLINGER replied he had taken notes, and he did not see it they same way. He said the question was raised why should the developer pay for the essential services that they entire community benefits from.

SENATOR WHEAT asked **Mr. Dabney** if he thought impact fees were making it harder to develop affordable housing.

Dab Dabney said he did.

SENATOR WHEAT said but you continue to build and develop in the Bozeman community.

Dab Dabney replied his wife told him he was unemployable doing anything else.

SENATOR WHEAT said irrespective of the impact fees you continue to build there because it's a strong market.

Dab Dabney replied that was correct, and there was a continuing need for the product.

SENATOR WHEAT asked **Clark Johnson** if there was an effort on behalf of the city of Bozeman to work with builders and developers to try and adjust impact fees or at least let them know why the fees are being imposed.

Clark Johnson said Bozeman was in a unique situation. He said their impact fee ordinance requires they restudy impact fees every three years. He said at the time they were supposed to restudy the fees the lawsuit was filed, and on the advice of their attorney they stopped the study and stopped spending the fees. He said the impact fee ordinance does allow for an independent study. If a builder feels the fee being charged is not correct for their kind of business they can do an independent study of the impact.

SENATOR WHEAT wondered if that happened with any degree of regularity.

Clark Johnson replied it did not.

SENATOR WHEAT asked why.

Clark Johnson replied he did not know why.

SENATOR RICK LAIBLE asked **Curt Chisholm** about the statements that were made that this should have come up earlier. He thought he had said in his testimony they had been trying to solve this and come up with some sort of compromise for some time.

Curt Chisholm said he was only involved in one meeting with the league, their executive director had been involved in other meetings.

Byron Roberts said they had an opportunity to meet with all the mayors and county commissioners in July of this year. He said they had kept in close contact. He said Mayor Kadas had responded with feedback and so had Bozeman. He said they had an opportunity to meet with the community development people in the Department of Commerce. He said they took all those things into consideration and included them in the final bill draft.

SENATOR LAIBLE said **SENATOR WHEAT** made the comment that the bill should be tabled and the issue could be worked out in the interim. He asked how much leverage he thought he would have if this bill was defeated as opposed to if it did pass.

{Tape: 3; Side: B}

Byron Roberts said they had been working on this for six years. He said they had tried to work out a compromise. He said this had been well thought out and was based on several other state statutes and felt it should be passed at this time.

SENATOR LAIBLE said if they passed this bill out of the Senate was he willing to work with the cities and towns in order to resolve some of these issues.

Byron Roberts replied they had been working and looking at various aspects of this bill including the advisory council attached to it. He said they had talked about the possibility of including administrative fees. He thought what they had right now was extremely workable and well thought out, but they would certainly be willing to work further.

SENATOR BRENT CROMLEY asked if the sponsor had any figures on the amount of impact fees collected in the city of Billings in a year currently and what the difference would be under this bill.

SENATOR BOHLINGER replied he did not. He thought maybe someone in the room would have that.

SENATOR CROMLEY said as he understood it, to determine the impact of this bill you would have to take the amount of impact fees

currently being collected, subtract the amount that could be collected under this bill and they would have a difference of what seemed to him to be several million dollars. Then you would have to divide that by the residents and place that on property taxes, would we not.

SENATOR BOHLINGER replied the bill provides a formula for the calculation of impact fees. He said the bill would provide a formula for what local governments must do to impose impact fees. He reiterated what those were. He said with regard to what the present total cost for the city of Billings, he could not give that information.

SENATOR CROMLEY said it was not clear if less impact fees would be collected under this bill that are currently being collected.

Clark Johnson replied it was their opinion that no impact fees would be collected under this bill, it was to burdensome.

SENATOR CROMLEY and how much are collected now.

Clark Johnson said over the collection time of their impact fees they had collected approximately \$15 million dollars.

SENATOR JOHN ESP asked **Mike Kakuk** asked if they could have three section out of this bill, which three would he want.

Mike Kakuk replied the guts of the bill are found in sections 4, 6, and section 8, assuming the definitions stayed the same. He said he would not want to be the drafter who tried to do that.

SENATOR ESP asked **Clark Johnson** the same question.

Clark Johnson replied the proponents and opponents actually have the same interest at heart. He thought his answer would be very consistent with Mr. Kakuk's. He said the bases for impact fees are in section 4. Section 5 and Section 6 are also somewhat acceptable.

SENATOR ESP asked if there was anything in the definition section that was problematic.

Clark Johnson replied yes, he thought line 21 would be a problem.

SENATOR ELLIOTT said he was wrong, the bill was not brought to them at the last moment. He said this was a revenue bill and did not have to meet the transmittal deadline.

SENATOR BOHLINGER said he thought of it as a bill that would establish a policy for the implementation of impact fees.

SENATOR CAROLYN SQUIRES said she was cranky when they find out that this could be a revenue bill and did not have to meet the deadline. She wanted to make a good decision but could not do it in an hour and half. She hoped they could consider it a revenue bill and discuss it further.

SENATOR LAIBLE asked **Mr. Kakuk** if there was a comment made about something specific and unique within the current system.

Mike Kakuk said that shows up in the bill and requires that local governments can only impose impact fees for those impacts that are specific and unique to the new development.

SENATOR LAIBLE asked **Clark Johnson** if they had \$15 million in a capital improvement fund, did they have a facilities plan for how that money would be spent.

Clark Johnson replied they did.

SENATOR LABILE asked if he knew what the facilities plan budget would be to complete the projects.

Clark Johnson said it would be in the hundreds of millions of dollars.

Closing by Sponsor:

SENATOR BOHLINGER thanked everyone and the committee for the questions. He said he brought the bill forward because he felt it might make housing more affordable in some way. He said if they were to impose on developers only those costs directly associated with bringing the public services to the building site. He thought it would limit the amount of money cities now received but did not close the door on opportunity for cities to allow for special improvement districts or have bond issues. He said he would discuss this with the committee at later length. He said he would rely on Leanne and Senator Glaser's opinion on whether it was a revenue bill.

EXECUTIVE ACTION ON SJR 25

Motion/Vote: SEN. ESP moved that SJR 25 DO PASS. Motion carried unanimously.

EXECUTIVE ACTION ON SJR 26

Motion/Vote: SEN. ESP moved that SJR 26 DO PASS. Motion carried unanimously.

EXECUTIVE ACTION ON SB 425

Motion: SEN. LAIBLE moved that SB 425 DO PASS.

Motion: SEN. LAIBLE moved that AMENDMENT SB042501.amv DO PASS.

Discussion:

SENATOR LAIBLE said he was concerned about the five day limit so the doubled it to ten days. He thought it would provide a lot of flexibility. He knew the amendment would make it a much better bill and make it a lot easier for the local governments to operate within the parameters.

SENATOR KELLY GEBHARDT pointed out that ten days may work in counties that have one or two staff members with a lot of engineering ability, but he said a lot of rural counties don't have that and they send the plats out for review and ten days was not adequate.

{Tape: 4; Side: A}

SENATOR ESP asked **SENATOR WHEAT** if he thought the county people were comfortable with the ten day limit as it was proposed.

SENATOR WHEAT said he got the impression that the amendments made the bill better by no one had the change to completely review them. He said he did not think the smaller counties liked the bill at all.

SENATOR ESP asked what his impression was from the hearing as to the support of non support of the bill with the amendments.

SENATOR LAIBLE said the opponents did not have a lot of time to review the amendments. He thought **Jennifer Magic** from Gallatin County said the sixty days was working quite well, and they have no problem doing their completeness review of an application within three days. He reminded them the ten day time frame was not for the sufficiency of the application only for the completeness.

SENATOR ESP asked if he had gotten the impression from the county sanitarians in the audience that ten days would be adequate.

SENATOR LAIBLE said there was comments to the point that they felt if they got in a bind, they would sent it to DEQ and turn the work over to them.

SENATOR WHEAT said **Travis West** from Stillwater County expressed that for these small counties with limited staff it was undoable, because the sanitarian was only there one day a week.

SENATOR SQUIRES pointed out the letter from Missoula County Sanitarian that opposed the bill.

SENATOR LAIBLE said in regards to Travis West, he said he can't do a sufficiency review in the ten days, but it was his feeling that the completeness review could be accomplished.

Vote: Motion carried 8-3 with **ELLIOTTT, GEBHARDT, and WHEAT** voting no.

Motion: SEN. LAIBLE moved that SB 425 DO PASS AS AMENDED.

Discussion:

SENATOR WHEAT said if it wasn't broke they shouldn't fix it. He said all of the opponents were from cities and counties across the state saying the current statute was working fine.

SENATOR GEBHARDT said there are six counties out there that share one sanitarian. He said there was no way one sanitarian could take care of this kind of issue in ten days. He said those counties would be out of compliance.

SENATOR LAIBLE said he understood where **SENATOR GEBHARDT** was coming from. He reminded them they were not looking for the sufficiency of the presentation only for the planning department to say the application was complete. He said he would be ok with an amendment to change it to 15 days.

SENATOR BOHLINGER asked **Senator Gebhardt** if he could support the bill if it was changed to a fifteen day period.

SENATOR GEBHARDT replied if it were fifteen working days.

Motion/Vote: SEN. GEBHARDT moved A CONCEPTUAL AMENDMENT TO CHANGE TEN DAYS TO FIFTEEN WORKING DAYS. Motion carried unanimously.

Motion: SEN. LAIBLE moved that SB 425 DO PASS AS AMENDED.

Discussion:

SENATOR SQUIRES asked how **SENATOR GEBHARDT** could say the sanitarian in his area could do it in 15 days. She wondered what they were doing. She thought it was crazy.

SENATOR GLASER said if there was an expert on the committee it would be **SENATOR GEBHARDT** because he has dealt with these counties, and he would rely on his advice.

SENATOR SQUIRES said she was obligated to her city and her public officials. She was going to go by what they were telling her.

SENATOR GEBHARDT said fifteen working days allowed three full weeks. He thought that would be adequate. He felt for the planners from the rural areas. He thought that somebody who deals with a lot of these can do completeness check within that amount of time. He would still have the sixty days to finish the process.

SENATOR LAIBLE said he understood **SENATOR SQUIRES** frustrations and concerns. He said that Mike Kadas made the comment that he was not opposed to the time frames in the bill.

SENATOR ELLIOTT asked Mike Kadas to comment.

Mike Kadas said he was not opposed to the concept of a time frame. He maintained no one had the chance to look at the bill.

Vote: Motion failed 5-6.

Motion: SEN. ELLIOTTT moved that SB 425 BE INDEFINITELY POSTPONED AND THE VOTE REVERSED. Motion carried.

EXECUTIVE ACTION ON SB 370

Motion: SEN. GEBHARDT moved that SB 370 DO PASS.

Motion: SEN. GEBHARDT moved that AMENDMENT SB037002.ALK DO PASS.

Discussion:

SENATOR GEBHARDT said the issues with the bill were that the medical providers would be stuck with the bill for the services they provided. He said the amendment would allow at the end of 120 days they county becomes the payer of last resort. They pay at the medicaid rate. He said it also provides that if the medical provider gets paid after the county has already paid them, they reimburse the money to the county.

Vote: Motion carried unanimously.

Motion: SEN. GEBHARDT moved that SB 370 DO PASS AS AMENDED.

Discussion:

SENATOR GEBHARDT said there was another amendment.

Motion/Vote: SEN. GEBHARDT moved that AMENDMENT SB 037001.ALK DO PASS. Motion carried unanimously.

Motion: SEN. GEBHARDT moved that SB 370 DO PASS AS AMENDED.

Discussion:

{Tape: 4; Side: B}

SENATOR WHEAT said before the amendments, the bill provided a cost shift from the counties to the hospitals. He asked if the amendments took care of that.

SENATOR GEBHARDT said they took care of it at the end of 120 days.

SENATOR MANGAN said **SENATOR GEBHARDT** had worked hard with these folks to get the amendment done. He believed it was fair and equitable and still addressed some of the concerns the counties had regarding the detention centers. He urged everyone to vote yes.

Vote: Motion carried 10-1 with CROMLEY voting no.

EXECUTIVE ACTION ON SB 372

Motion: SEN. ESP moved that SB 372 DO PASS.

Motion: SEN. MANGAN moved that SB 372 BE INDEFINITELY POSTPONED.

Discussion:

SENATOR LAIBLE resisted that motion. He thought the bill should be discussed. He said he had a letter from Gallatin County in response to the bill. He read the letter.

Vote: Motion carried 10-1 with LAIBLE voting no.

EXECUTIVE ACTION ON SB 46

Motion: SEN. SQUIRES moved SB 46 be taken from the table.

SENATOR SQUIRES said this bill was better and she thought they needed it, so she recommended they pass it.

SENATOR LAIBLE asked if there was an amendment for this bill.

Vote: Motion carried unanimously.

Motion: SEN. ELLIOTTT moved that SB 46 DO PASS.

Discussion:

SENATOR LAIBLE said he would like to offer an amendment. He said beginning on line 14, "strike the, and insert for", also on line 14 following maintenance "strike of any building road or bridge" and on line 17 following lowest "strike and best".

Leanne Kurtz asked him to repeat that.

SENATOR LAIBLE repeated his amendment. He read the sentence, "for construction, repair, or maintenance in excess of \$50,000 may not be.."

SENATOR ELLIOTT said so the effect of that is to basically amend your bill into SB 46.

SENATOR LAIBLE replied that was not the intent. He was concerned that some governments were beginning to be construction companies.

SENATOR ELLIOTT said there was an easy remedy for that, the election booth. He trusted the elected officials of his counties to make the proper decisions.

Motion: SEN. LAIBLE moved that CONCEPTUAL AMENDMENT DO PASS.

Discussion:

SENATOR WHEAT asked if the amendment included line 17.

SENATOR LAIBLE replied it did.

SENATOR GEBHARDT said the last strike on line 17, striking, "lowest and best" was probably not good. He said the state had problems with a lowest bid to buy computers. He said the reason that language is in there is to allow the local entities some discretion.

SENATOR LAIBLE said the language would read "the lowest responsible bidder".

SENATOR BOHLINGER said line 17 would say "the lowest responsible bidder".

SENATOR SQUIRES asked if **SENATOR GEBHARDT** liked that.

SENATOR GEBHARDT replied the best language would be to the lowest most responsible bidder. He thought best was a poor word.

SENATOR LAIBLE said he did not have a problem with that language.

SENATOR BOHLINGER asked **Leanne** to read the language.

Leanne Kurtz replied on page one line 14, strike the word "the" and insert "for"; page one line 14, strike "of through bridge"; and page one line 17 strike the word "best" insert the word "most."

SENATOR ESP said most responsible was a nebulous term.

SENATOR GLASER said it all boils down to judgement. If you said most responsible, it would be in the eyes and minds of the county commissioners.

SENATOR ESP said he resisted that part.

SENATOR CROMLEY said he thought, "lowest and best" was a term of art and industry. He thought that was used in many bidding situations.

SENATOR GLASER said if they were searching for words that were very specific, they could say lowest acceptable bid.

SENATOR GEBHARDT said that was ambiguous also. He said everyone accepted things differently.

SENATOR ELLIOTT said his county commissioners liked they bill they way it was, so he was going to urge they reject the amendment.

Vote: Motion failed 10-1 with LAIBLE voting aye.

Motion/Vote: SEN. GEBHARDT moved that SB 46 DO PASS. Motion carried 9-2 with GLASER and LAIBLE voting no.

Motion/Vote: SEN. MANGAN moved that SB 396 BE INDEFINITELY POSTPONED. Motion carried 8-3 with ESP, GLASER, and LAIBLE voting no.

ADJOURNMENT

Adjournment: 7:30 P.M.

SEN. JOHN C. BOHLINGER, Chairman

PHOEBE OLSON, Secretary

JB/PO

EXHIBIT (los42aad)